REMARKS

I. Status of Claims

With entry of this amendment, claims 5, 7-15, and 20-37 are pending. Claims 1-4, 6, and 16-19 have been canceled without prejudice herein. Claims 5, 7-10, 12-15, 20, and 22-26 have been amended. Those claim amendments will be discussed in more detail below. However, those amendments are supported in the original application, as filed, and do not add new matter. Claims 27-37 have been added. Those claims find support in the application as originally filed, and accordingly their addition does not add new matter.

II. Restriction Requirement

The Office required restriction to the following groups of inventions:

Group I: claims 1, 2, 4, 5, 7-15, and 18-26, drawn to compounds, pharmaceutical preparation and method of use of compounds corresponding to formula (I) as described in claim 5, and

Group II: claims 3, 4, 6, 7-13, and 16-26, drawn to compounds, pharmaceutical preparation and method of use of compounds corresponding to formula (II) as described in claim 6. (Office Action at p. 2.)

The Examiner contends that the inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1.

During a telephone interview with the Examiner, Applicants provisionally elected with traverse to prosecute the invention of Group I, claims 1, 2, 4, 5, 7-15 and 18-26. Applicants affirm that election.

III. Claim Objections

Claims 12, 13, and 18-26 were objected to under 37 C.F.R. § 1.75(c) as being in improper form because they were multiple dependent claims that depended on multiple dependent claims. Those claims were amended to conform M.P.E.P. § 608.01(n).

Claims 7-13 and 18-26 were objected to as containing non-elected subject matter. Those claims have been canceled or amended to remove non-elected subject matter. Applicants assert that the currently pending claims encompass subject matter of Group I, discussed above.

IV. 35 U.S.C. § 101 and § 112 Rejections

The Examiner has rejected claims 18, 19 and 26 under 35 U.S.C. § 101, and § 112, stating that these claims recited a "use" without setting forth any steps. (Office Action at p. 4.) Claims 18 and 19 have been canceled, and 26 has been amended herein to conform it to U.S. practice.

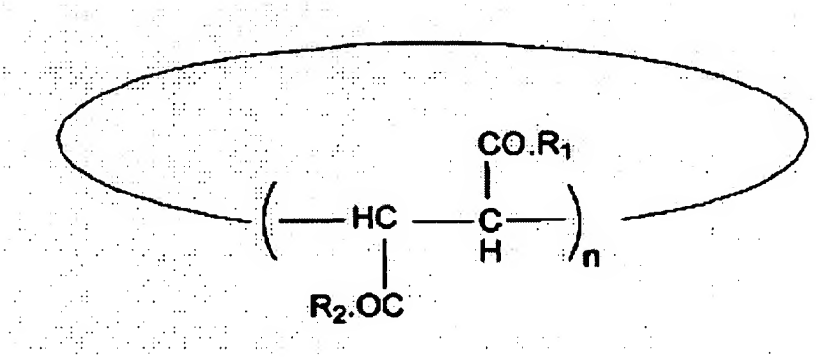
V. 35 U.S.C. § 102(b)

Claims 1, 2, 4, 5, 7, 9, 12, 18-22, 25, and 26 have been rejected under 35 U.S.C. § 102(b) as anticipated by (U.S. Patent No. 3,920,837 to Schmidt-Dunker et al. ("Schmidt"). (Office Action at p. 5.)

Applicants respectfully traverse this rejection.

Without conceding the propriety of the rejection, Applicants have canceled claim 1 and amended claim 5 herein to recite:

> An oligomer of the following formula (I)



wherein the radicals R_1 and R_2 are the same or different and each occurrence of radicals R_1 and R_2 is independently chosen from amine radicals ($-NR_3R_4$), amino acid radicals ($-NH-CH(COOH)-R_6$), peptide radicals having from 2 to 100 amino acids, alcohol radicals ($-OR_5$) and a hydroxyl radical,

n is an integer from 2 to 10,

the radicals R_3 and R_4 are the same or different and are independently chosen from hydrogen, C_{1-24} alkyl radicals, a phenyl radical and C_{6-10} aralkyl radicals,

the radical R_5 is chosen from hydrogen, C_{1-24} alkyl radicals, a phenyl radical and C_{6-10} aralkyl radicals,

and the radical R_6 represents the side chain of a natural or synthetic amino acid,

provided that when R_1 and R_2 are alcohol radicals ($-OR_5$) and R_5 is a methyl radical, then n is not 2, further provided that when R_1 and R_2 are hydroxyl radicals, then n is not 3, and even further provided that when R_1 is an amine radical ($-NR_3R_4$), R_3 is a hydrogen, R_4 is a C_{6-10} aralkyl radical, and R_2 is hydrogen, then n is not 2.

That claim and its dependent claims are not anticipated by Schmidt. Indeed, cyclohexane-1, 3,4,5,6-hexacarboxylic acid and water-soluble salts thereof (i.e., oligomers consisting of 3 units derived from fumaric acid and water-soluble salts thereof), as described in Schmidt, are not encompassed within the presently claimed scope.

For at least that rejection, the rejection should be withdrawn.

Claims 1, 2, 4, 5, 7, and 9-14 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,139,395 to Griffin ("Griffin"). (Office Action at p. 6.)

Applicants respectfully traverse this rejection.

Without conceding the propriety of the rejection, Applicants have amended the claims, and as amended no claims read on Griffin. For example, the tetramethyl ester of trans, trans, trans-1,2,3,4-cyclobutanetetracarboxylic acid (i.e., an oligomer consisting of 2 units derived from dimethyl fumarate), as described in Griffin, does not fall within the scope of the present claims. For at least that reason, this rejection should be withdrawn.

Claims 1, 2, 4, 5, 8, 12, and 18-26 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,631,401 to Stein et al. ("Stein"). (Office Action at p. 6.)

Applicants respectfully traverse this rejection.

Without conceding the propriety of the rejection, Applicants have amended the claims herein, and as amended no claim reads on Stein. In particular, 1,3-di-[*N*-propyl-*N*-(5-phenylpentyl)aminocarbonyl]cyclobutane-2,4-dicarboxylic acid (i.e., an oligomer consisting of 2 units derived from a certain fumaric acid monoamide), as described in Stein, does not fall within the present claim scope.

For at least that reason, the rejection should be withdrawn.

VI. 35 U.S.C. § 103(a)

The Examiner has maintained the rejection of claim 15 under 35 U.S.C. § 103(a) as being unpatentable over Schmidt. (Office Action at p. 8.)

Applicants respectfully traverse this rejection.

To establish a *prima facie* case of obviousness, among other requirements, the reference(s) must disclose each element of the claim. M.P.E.P. § 2143. However, as

discussed above, Schmidt does not disclose any species falling within the presently claimed range. Consequently, a *prima facie* case cannot be established.

For at least that reason, the rejection should be withdrawn.

VII. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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